IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8545 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAURASHTRA GANDHIJI GRAMODHYOGTRUST

Versus

WESTREN REGIONAL COMMITTEE

Appearance:

1. Special Civil Application No. 8545 of 2002

MR SHIRISH JOSHI for Petitioner No. 1

MR PK JANI for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 04/10/2002

ORAL JUDGEMENT

1. Rule. Mr.Jani, learned Counsel for respondents

No.1 and 2, waives service of notice of rule. With the consent of the parties, the matter is taken up for final hearing today.

2. The short facts of the case are that the petitioner, which is a charitable Trust, applied for recognition of B.Ed. College to respondent No.1. The application was made on 4-9-2000. The application was processed and ultimately the inspection visit was made on 24-7-2001. On the basis of the said inspection visit and after considering the material, on 8-11-2001, the decision was communicated by respondent No.1, whereby the request to grant recognition was refused. The matter was carried by the petitioner to the appellate authority and ultimately the appellate authority, on 25th June, 2002, passed the order, whereby the other deficiencies which were mentioned in the order of the first authority were considered as complied with. However, so far as the strength of the lecturers is concerned, it was found by the appellate authority that as per the regulations, for the strength of the students of 100 or less, there must be a minimum seven lecturers plus one principal and since the petitioner has appointed only four lecturers plus one principal, petitioner is not meeting with the requirement and, therefore, the appeal was dismissed. The stand of the petitioner was that at the time when the application was made, requirement as per the regulations was one teacher for ten students and since the petitioner wanted to open the class with the strength of 40 students, four teachers were sufficient. However, without prejudice to the said contentions, the petitioner communicated to the appellate authority that it is ready to appoint three more teachers and on the said aspect the petitioner made representation to respondent No.2. However, respondent No.2, as per the letter dated 5-8-2002, communicated to the petitioner that once the appellate authority has taken decision, there is no power of review and hence the request could not be accepted and under these circumstances, the present petition.

3. Mr.Joshi, learned Counsel appearing for the petitioner, has submitted that at the time when the application was made the regulations which were prevailing prior to September, 2001 were applicable and in his submission, the petitioner had complied with all the requirements as per the regulation then prevailing and still, however, with a view to see that the petitioner meets with the present regulations also, the willingness was shown to have seven teachers plus one principal, but the said request was turned down on the ground that there is no power of review. Mr.Joshi

submitted that when the petitioner is ready to comply with the existing regulations also, without insisting for the earlier regulations, the authority should have taken a reasonable view of the matter, but the representation is rejected only on the ground that there is no power of review. It has been submitted by Mr.Joshi that since the term is to expire in a very short time, if immediate action is not taken in this regard by the competent authority, it would create other complications. Mr.Joshi also submitted that when the petitioner is meeting with the requirements as per the new regulations, the order of the appellate authority be quashed and recognition may be ordered, so that the petitioner can continue with the B.Ed. College.

4. On behalf of the respondents, it has been submitted by Mr.Jani, learned Counsel that respondent No.1 as well as No.2 are expert body in the field of education and it is true that the application was made on 4-9-2000. However, when the decision came to be communicated in November, 2001, new regulations had already come into force. Mr.Jani submitted that even as per the regulations prevailing prior to September, 2001, minimum strength of the students should be 60 and, therefore, minimum six lecturers must be there for running or opening new college of B.Ed. He submitted that the criteria as per the new regulations is seven lecturers plus one principal for the capacity of 100 or less than 100 students. Mr.Jani submitted that since the petitioner did not meet with the requisite criteria, the authority had rightly taken decision of rejecting the application and the appellate authority also accordingly confirmed the said decision. Mr.Jani also submitted that as it is when the decision was taken by the first authority, there were more than one deficiencies. However, he fairly submitted that the appellate authority has rejected the appeal only on the ground of not recruiting seven lecturers, which was the required norm at the relevant point of time. He further submitted that when the expert body had taken the decision, this Court, while exercising power under Article 226 or 227 of the Constitution, may not interfere with the decision and he submitted that the petition deserves to be dismissed.

5. In view of the above, it is true that normally this Court would not substitute its opinion in place of the opinion of expert body, more particularly in the field of education. However, in my view the present case centres round on the point of not substituting the opinion of the expert body, but rather on the point of application of regulations and more on the point of

capacity or strength of the number of teachers only. In my view, it is a matter of plain and simple interpretation of regulations and this Court is not required to substitute its own opinion in place of the opinion of the expert body and hence the matter can be considered from this angle.

6. It is true that the order of the first authority dated 8-11-2001 shows five deficiencies in not granting recognition. However, the order of the first authority dated 8-11-2001 has merged with the order of the appellate authority dated 25-6-2002. When the appellate authority, while passing the order dated 25-6-2002, has found that the other deficiencies are not in existence and only deficiency not complying with the norms is the number of lecturers as against the strength of the students. In my view, the other deficiencies which were mentioned in the order dated 8-11-2001 would not survive on account of the principles of doctrine of merger. The order which this court is required to consider is the order dated 25th June, 2002. If the order dated 25-6-2002 of the appellate authority is considered, the only ground of rejecting the appeal is that seven lecturers should be there for a unit of 100 students or less than 100 students and, therefore, it will have to be examined that whether the ground which is shown by the appellate authority is illegal and/or valid or not. The reliance is placed on behalf of the respondents upon the regulations which had come into force on 4th September, 2001 and it is also contended that even as per the regulations which had come into force from 27-3-1999 onwards and were prevailing prior to 4th September, 2001, the minimum requirement was six lecturers for intake capacity of 60 or less students. In this regard, the respondents have produced the relevant portion of the government gazette and at page 94 of the compilation of Special Civil Application the regulations which had come into force on 27-3-1999, are produced wherein requirements prior to 4th September, 2001 shows as under:

"2.1 Teaching Staff
Teacher-student ratio 1:10

For example

For 60 students 6 teachers and 1
Principal/Head

For 120 students 12 teachers and 1
Principal/Head

(Principal/Head not to be included for calculating Teacher-Pupil ratio).

The staffing should enable provision for offering training in at least TWO specialization methods.

2.1 Specialization and Qualifications of Teaching Staff

6 teachers (for 60 students) be as follows:

Reader/Leacturer for General education subjects-3, Method subject teachers 1 for each; In addition, Part time teachers for Art, Music, Crafts etc."

7. The aforesaid shows that the teacher-student strength or teacher-student ratio as mentioned is 1:10. However, in the other portion of 2.1, it has been mentioned that six teachers for 60 students. There is no other specific provision brought to the notice of the Court that a unit as per the regulations must be of 60 or less students or there must be a minimum strength of six teachers on the basis of 60 students or less per class. As it is, it appears that the ratio, as was provided, was 1:10 and for existing ratio, the example given is as for 60 students six teachers and one principal would be the requisite strength. In the affidavit-in-reply of the respondent at para 6, it has been mentioned that the petitioner had selected four lecturers with one principal as it wanted to admit only 40 students. If the case of the petitioner was that only 40 students were to be admitted and, therefore, four lecturers were recruited, the same in my view cannot be said to be not meeting with the norms, which existed prior to September, 2001 since the ratio provided was 1:10. However, pending the application as mentioned earlier, on 4th September, 2001 new regulations have come into force and there is no dispute on the point that as per the new regulations for a unit of 100 or less students, seven lecturers plus one principal is the requirement. It is the case of the petitioner that the decision dated 8-11-2001 came to be taken on the basis of the inspection visit carried out on 24-7-2001 and, therefore, on 24-7-2001, the regulations provided for one teacher as against ten students and, therefore, it has been submitted on behalf of the petitioner that on 24-7-2001, the petitioner had complied with the norms of the teachers as per the regulations then existed and, therefore, it has been further

submitted that the decision was taken in the meeting of August 2001 and only the communication wad made on 8-11-2001 and, therefore, even when the decision was taken at the meeting which was held on 20/21-8-2001, the petitioner was meeting with the requirement of teachers on the basis of the ratio of 1:10 as per the regulations then prevailing. There is a considerable force in the said contention because the relevant date for the purpose of taking decision would be 20-8-2001 and the communication was made on 8-11-2001 and, therefore, it cannot be said that the petitioner did not satisfy the requirement of teachers as per the regulations then prevailed at the time when the decision was taken. The appellate authority has not considered the said aspects and, therefore, I am of the view that the order of the appellate authority is erroneous on the face of the record.

8. This Court is now not further required to examine the consequences of satisfying the test on the basis of the regulations then prevailed by the petitioner, because the petitioner itself has shown an additional willingness that it is ready to meet with or rather comply with the present existing norms also. Apart from the willingness on the part of the petitioner, even new regulations cannot be totally ignored at the time when the appellate authority took the decision. New regulations have provided that seven teachers for a unit of 100 students or less students and, therefore, seven teachers can be considered as the requirements. If the law is interpreted strictly, it could be said that the appellate authority could examine only the situation as prevailing on the date when the first authority took the decision, but even if the new regulations are taken into consideration and when the petitioner has shown its willingness to comply with the new norms also, in my opinion, no prejudice will be caused to anyone if the petitioner Trust is granted recognition for B.Ed. College. I am inclined to take such view because there is no other deficiency found in meeting with the norms by the petitioner Trust, even by the expert body, which has power to take the decision.

9. Though it is requested by Mr.Joshi to pass the order for granting recognition to the petitioner Trust for B.Ed. College, since the petitioner is ready to be abided by the new norms also, in my view as per the settled legal position, normally the Court will not, on its own, give a direction to grant recognition, but would rather direct the authority to consider the case of the petitioner to grant recognition on the basis of the

observations and the findings recorded by this Court and, therefore, I find that it is a case whether the directions should be given to respondent No.1 to reconsider the case of the petitioner for granting recognition as per the observations made by this Court in this judgement as referred to hereinabove.

10. Mr.Joshi submitted that even if this Court give directions for considering the case as per the observations, the time is running against the petitioner and, therefore, a time-bound direction may be given by this Court so that the complications of expiry of the term may not arise and the future of the students, who may ultimately be admitted may not suffer.

11. On behalf of the respondents, Mr.Jani submitted that the members of respondent No.1 committee are staying at a different place of the country and, therefore, it is not possible for respondent No.1 to convene the meeting within a short time and he also submitted that special expenses may be required to be incurred, because expenses will have to be incurred for travelling, etc. of the members concerned.

12. In response to that, Mr.Joshi submitted that if the petitioner is directed to bear the costs of convening the special meeting, there is no objection on the part of the petitioner, but the anxiety is to see that the decision of granting recognition is taken at the earliest.

13. In view of the above discussion, the order passed on 25-6-2002 by respondent No.2 and the order dated 8-11-2001 passed by respondent No.1 are quashed and set aside with the directions that the respondents shall consider the case of the petitioner in light of the observations and the findings recorded by this Court for the purpose of granting recognition of B.Ed. College. The matter will be considered by respondent No.1 within a period of one month from today and it is also made clear that if respondent No.1 is required to call a special meeting for such purpose, the petitioner will bear the expenses for such meeting as may be quantified by respondent No.1.

14. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. No costs. Direct service is permitted.

4-10-2002 (Jayant Patel, J.)

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